IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4777 OF 2006

Ratnabai Sangameshwar Sardar
& Anr. .. Petitioners.

vs.

Nagappa Shivappa Sabale
since deceased by heirs and
legal representatives
Shalinibai Nagappa Sabale
& Ors. .. Respondents.

Mr. K.Y. Mandlik for petitioners.
Mr. Surel S. Shah for Respondent Nos. 1A to 1E.

CORAM : A.P. DESHPANDE, J.

DATE : 10th November, 2006.

P.C.

. The order passed by the First Appellate Court below Exhibits-34 and 36 is challenged by filing this petition. The petitioner/defendant moved the applications with a view to lead additional evidence under Order 41 Rule 27 of CPC for production of a certified copy of an order passed in Regular Civil Suit No. 59 of 1977 dated 31.1.1983. The said applications were opposed. The

main reason of rejection of the applications by the First Appellate Court is that the plaintiff/respondent has categorically averred in the plaint the fact of filing a Regular Civil Suit No. 59 of 1977, having been filed by respondent Nagappa, and the petitioner was made aware about the said proceedings. Though the filing of the said suit was mentioned in the plaint, the petitioner did not take any step by showing diligence in procuring the order passed therein and in filing of the same before the trial Court. The First Appellate Court has observed that in this fact situation the case is not covered by the parameters of Order 41 Rule 27. Having found that the petitioner had not taken any steps whatsoever before the trial Court to produce the said evidence, the prayer is rejected. The First Appellate Court further considered as to whether the said document is material for decision of the dispute in the appeal and after perusing the order has found that the said order has no bearing in the instant proceedings. The said suit was instituted only against Laxmibai for permanent injunction simplicitor and as Laxmibai died, the said suit came to be abated against her in the year 1983. In this view of the matter, the First Appellate Court has rejected the application.

2. Perused the order. No interference is called for.

(A.P. Deshpande, J.)